



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0686]

RIN 1625-AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone for all navigable waters within an area of one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. This safety zone is needed to protect personnel, transiting vessels, and Liquefied Gas carriers. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan or his designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through April 30, 2020. For the purposes of enforcement, actual notice will be used from February 29, 2020 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0686 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2374, email Pedro.L.Mendoza@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
LNG	Liquefied Natural Gas
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for issuing this temporary final rule because it continues to be necessary to safeguard incoming, moored, and outgoing LNG carriers within San Juan Harbor, San Juan, Puerto Rico. This rule extends the duration of the existing temporary safety

zone on navigable waters within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. This extension is necessary while we complete the rulemaking process for the associated NPRM¹, which proposes to permanently revise the existing regulation in § 165.754 to add LNG carriers is ongoing. The first temporary rule was effective from September 13, 2019 until 11:59 p.m. on November 15, 2019. The second temporary rule extended the duration of the safety zone and is set to expire at 11:59 p.m. on February 28, 2020. This action extends the duration of the safety zone until 11:59 p.m. on April 30, 2020. This action allows for time to complete the rulemaking process for the associated NPRM. Therefore, it is impracticable and contrary to the public interest for the existing temporary safety zone to lapse.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. Potential hazards associated with LNG carriers continues to be a safety concern for anyone within 50-yards of these carriers. The purpose of this rule is to extend the current safety zone until April 30, 2020 to ensure the safety of vessels and the navigable waters within a 50-yard radius of LNG and LPG carriers transiting San Juan Harbor while the rulemaking process is completed for the NPRM, which proposes to revise the safety zone in § 165.754. This temporary final rule continues to safeguard vessels at an adjacent berthing location, Puerto Nuevo Berth B, which supplies LNG to the Puerto Rico Electric Power Authority (PREPA) and other industrial sectors.

¹ See NPRM entitled, “Safety Zone; San Juan Harbor, San Juan, PR, which published on December 17, 2019 (84 FR 68860).

IV. Discussion of the Rule

A moving safety zone is established in the following areas: (1) The waters around Liquefied Gas carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18-29.3N, 66-07.6W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18-25.8N, 66-06.5W. (2) The waters around Liquefied Gas carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. (3) The waters around Liquefied Gas carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18-25.8N, 66-06.5W when the vessel gets underway, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18-28.3N, 66-07.6W.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative. The Coast Guard will provide notice of the safety zone through Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and designated on-scene representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, available exceptions to the enforcement of the safety zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the safety zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 36

days that will prohibit entry within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the separate rulemaking (84 FR 68860) to modify the San Juan Harbor, San Juan, Puerto Rico safety zone is properly proposed and implemented. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T07-0686 to read as follows:

§ 165.T07-0686 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Location.* A moving safety zone is established in the following area:

- (1) The waters around Liquefied Gas carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18-29.3N, 66-07.6W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18-25.8N, 66-06.5W. All coordinates are North American Datum 1983.
- (2) The waters around Liquefied Gas carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.
- (3) The waters around Liquefied Gas carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18-25.8N, 66-06.5W when the vessel gets underway, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18-28.3N, 66-07.6W. All coordinates referenced use datum: NAD 83.

(b) *Definition.* As used in this section, the term “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone unless authorized by the COTP San Juan, Puerto Rico, or a designated Coast Guard

commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.

(3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(4) The COTP and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF-FM channels 16 and 22A.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

(d) *Notification.* The zone described in paragraphs (a)(1) through (3) of this section will be activated upon entry of an LNG carrier into the navigable waters of the United States in the San Juan Captain of the Port Zone. An LNG carrier will be identifiable by the requirement to

fly the Bravo flag (red international signal flag under Pub. 102, International Code of Signals) from the outermost halyard (above the pilot house) where it can most easily be seen. In addition to visual identification of an LNG carrier, Coast Guard Sector San Juan will give notice through Mariners Broadcast Notice to Mariners for the purpose of enforcement of the temporary safety zone.

(e) *Enforcement period.* This rule is enforced from 12:01 a.m. on February 29, 2020 through 11:59 p.m. on April 30, 2020.

Dated: February 28, 2020

E. P. King
Captain, U.S. Coast Guard,
Captain of the Port San Juan
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